



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

AUG 1 0 2005

Glenn M. Williard
Patton Boggs, LLP
2550 M Street, N.W.
Washington, DC 20037

RE: MUR 5390

Dear Mr. Williard:

On August 8, 2005, the Federal Election Commission found that there is reason to believe the Republican Governors Association, violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Adam Schwartz, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Procedures

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Republican Governors Association MUR 5390

I. INTRODUCTION

This matter was generated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities.

II. FACTUAL AND LEGAL ANALYSIS

On October 25, 2002, the Federal Home Loan Mortgage Corporation ("Freddie Mac") reportedly contributed \$150,000 to the Republican Governor's Association ("RGA"). The RGA reportedly misreported the contribution as a personal contribution from R. Mitchell Delk, Freddie Mac's Senior Vice President for Government Relations. Mr. Delk and Freddie Mac's outside counsel became aware of the misreporting "a number of months later." In June 2003, the RGA reportedly refunded the contribution to Freddie Mac.

The Act prohibits "any corporation organized by authority of any law of Congress" from making "a contribution or expenditure in connection with any election to any political office." 2 U.S.C. § 441b(a). The Act also prohibits "any candidate, political committee, or other person" from knowingly accepting or receiving "any contribution prohibited by this section." *Id.* For purposes of Section 441b, the terms "contribution" and "expenditure" include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in" Section 441b.

Prior to the passage of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002), the so-called "building fund exemption" permitted national and

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1 state committees of political parties to accept donations from corporations, including those like
2 Freddie Mac, which are organized by authority of any law of Congress, "*specifically designated*
3 to defray any cost for construction or purchase of any office facility not acquired for the purpose
4 of influencing the election of any candidate in any particular election for Federal office."

5 2 U.S.C. § 431(8)(B)(viii) (emphasis added). Funds falling under the building fund exemption
6 are exempt from the prohibitions of 2 U.S.C. § 441b. See 11 C.F.R. § 114.1(a)(2)(ix). BCRA,
7 which took effect November 6, 2002, just days after Freddie Mac's \$150,000 contribution to the
8 RGA, removed the building fund exemption for national party committees.

9 Reportedly, it was Freddie Mac's intention to make a permissible building fund
10 contribution. Mr. Delk reportedly stated that the \$150,000 contribution was part of a single
11 \$250,000 commitment of support that he made to the RGA on behalf of Freddie Mac in February
12 2002. Freddie Mac made the first part of the contribution in March 2002 by writing a check for
13 \$100,000 to the "RGA Building Fund." The RGA does not and has never maintained a building
14 fund. Until sometime in October or November 2002, the RGA was a part of the Republican
15 National Committee ("RNC"), which operated a fund under the name RNC Committee to
16 Preserve the Dwight D. Eisenhower National Republican Center ("Building Fund"). This fund
17 apparently accepted contributions to the Building Fund on behalf of the RGA, including the
18 \$100,000 contribution from Freddie Mac.

19 On October 24, 2002, Freddie Mac received a solicitation from the RGA for the
20 remaining \$150,000. The solicitation instructed Freddie Mac to write a check to the RGA.
21 Freddie Mac made the final installment of the contribution by delivering a check for \$150,000
22 made payable to the RGA to Wayne Berman, the Honorary Finance Chairman of the RGA, on
23 October 25, 2002.

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1 When Freddie Mac made its \$150,000 contribution to the RGA, the RGA was operating
2 independently of the RNC. The transition to an entity entirely independent of the RNC began on
3 October 4, 2002. The last date the RNC deposited a contribution on behalf of the RGA was
4 September 5, 2002. The RGA deposited the \$150,000 contribution from Freddie Mac into its
5 operating account on October 29, 2002.

6 Given that (1) the \$150,000 contribution check was not specifically designated, on its
7 face, for building fund purposes, in contrast to the first part of the \$250,000 commitment, (2) the
8 RGA did not have a building fund account, (3) the RGA may have been a separate and distinct
9 organization from the RNC at the time the \$150,000 contribution was made, and (4) the RGA
10 deposited the \$150,000 contribution directly into its operating account, there is reason to believe
11 that the Republican Governors Association violated 2 U.S.C. § 441b by knowingly receiving a
12 prohibited contribution.

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